PATENT

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Inventor:	Bryan Salt	Atty.Dkt.No.:	6257-31902
Serial Number:	10/501,488	Examiner:	Mirza, Adnan M.
Filing Date:	April 22, 2005	Group/Art Unit:	2443
Title:	EFFICIENT IMAGE TRANSMISSION	Conf. No.	2505

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On: February 16, 2011 /Luiz von Paumgartten/
Date Luiz von Paumgartten, #52,330

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Appellant requests review of the Final Office Action dated October 18, 2010 ("Final Office Action") and the Advisory Action dated January 13, 2011 ("Advisory Action") in the above-identified application. This request is being filed concurrently with a Notice of Appeal.

No amendments are being filed with this request. Claims 52-55 and 118-137 remain pending in this case. All pending claims stand rejected under 35 U.S.C. § 103 over *Pavlidis* (U.S. Patent No. 6,995,762) in view of *Pulier* (U.S. Patent App. Pub. No. 2002/0091840). In addition, claims 118-126 and 137 stand rejected under 35 U.S.C. § 101. Appellant respectfully traverses and requests reconsideration of the pending rejections in light of the following remarks.

***Pavlidis* is not prior art with respect to the pending claims**

Pavlidis' filing date of September 13, 2002 is later than the priority date of record in the present case—*i.e.*, January 15, 2002. As such, *Pavlidis* can only be used to reject the pending claims if its provisional application (Serial No. 60/318,996 filed on of September 13, 2001) "properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph." M.P.E.P. § 2136.03(III). Here, the Examiner's rejection is based on passages of *Pavlidis*—specifically, col. 5, lines 45-54 and col. 19, lines 62-67—that are completely absent from its provisional application, and therefore are not supported under 35 U.S.C. 112, first paragraph. For example, the provisional

application does not show FIG. 1 of *Pavlidis*, which col. 5, lines 45-54 purports to describe. Also, the provisional application does not include a discussion of a "parcel shipping business," which col. 19, lines 62-67 purports to describe. Therefore, at least as used in the Final Office Action, *Pavlidis* is not prior art with respect to the pending claims.

The Advisory Action's response to these arguments is simply that "particular columns and line numbers [are cited] … for the convenience of the Appellant," and that "other passages and figures may apply as well." *See* Advisory Action. However, the Examiner has not pointed to any other passages or figures of *Pavlidis* that are believed to provide a basis for rejection the pending claims and that are believed to be properly supported by the provisional application. "The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." M.P.E.P. § 2142. In this case, at least because *Pavlidis* cannot be used to reject the pending claims as put forth by the Examiner, Appellant submits that the Examiner has not met that burden.

At least for these reasons, Appellant respectfully requests withdrawal of all oustanding 35 U.S.C. § 103 rejections.

The combination of references does not teach or suggest several features of claim 52

Appellant has been unable to find any passage of *Pavlidis* that would seem to teach or suggest, for example, "***identifying a communication parameter associated with a client***" or "***identifying a processing parameter of the client***," as recited in claim 52. The only passage of *Pavlidis* cited as allegedly disclosing these elements provides that:

> The system 10 includes an image capture component 20 that receives a 2-D image. A data store 30 is part of the system and can be employed to store image related data. An image analyzer 40 analyzes the captured image--the image analyzer includes a distance analyzer 50 and scaling component 50 which are employed in connection with generating data for the object construction. Details regarding distance analysis (e.g., camera distance from 2-D image) and image scaling are discussed in substantial detail infra.

Pavlidis, 5:45-54. This passage does not teach or suggest a "communication parameter" or a "processing parameter" of a client. *Pavlidis* also fails to teach or suggest, for example, "***receiving a request to provide the image to the client***," "***selecting a set of the plurality of operations***," or "***performing the set of the plurality of operations to generate a processed image element***." The only passage of *Pavlidis* cited as allegedly disclosing these elements provides that:

> Solid object reconstruction can be employed in a variety of applications. For example, the present invention can be utilized in a parcel shipping

> business. The box dimensioning processes can be utilized to gather data on package sizes for volume dependent shipping charge assessment. The box dimensioning processes can also be utilized for preparing shipping vehicles and arranging shipping routes depending on the volume of packages.

Pavlidis, 5:45-54. However, this passage again does not teach or suggest any of the recited elements. Appellant has been unable to find a passage of *Pavlidis* that would seem to teach or suggest these elements, and the Examiner has not pointed to any such passage.

Appellant has also been unable to find any passage of *Pulier* that would seem to cure *Pavlidis*' deficiencies. For example, *Pulier* is clearly a "client-based system." *Pulier*, ¶ [0008]. As a result, *Pulier* does not teach or suggest, for example, "***the server identifying a communication parameter associated with a client***" or "***the server identifying a processing parameter of the client***," as recited in claim 52. To the extent any of these operations could be thought of as being disclosed in *Pulier*, which Appellant disputes, it would be *Pulier*'s client—not its server—that would perform such operations. Therefore, the proposed combination of *Pavlidis* with *Pulier*, even if proper, would fail to teach or suggest several elements of claim 52.

At least for these reasons, Appellant respectfully requests that the 35 U.S.C. § 103(a) rejection of claim 52 and its respective dependent claims be withdrawn.

The rejection of record does not address certain features of claim 118

Although claim 118 recites elements that are different from those of claim 52, similar arguments still apply. In addition, claim 118 recites, in part "***performing [a] first portion of [a] plurality of tasks on at least a portion of the plurality of image elements to produce a partially processed version of the image***." The Examiner does not address this element, and therefore a *prima facie* case has not been made as to claim 118. Moreover, Appellant respectfully asserts that the proposed combination of references does not teach or suggest such element. For example, while *Pulier* discloses a client receiving "streaming media," there does not appear to be anything in *Pulier* to indicate that such "streaming media" includes a "partially processed version of an image," as recited in claim 118. *See, e.g.*, *Pulier*, ¶ [0008]. At least for these additional reasons, Appellant respectfully requests that the 35 U.S.C. § 103(a) rejection of claim 118 and its respective dependent claims be withdrawn.

The rejection of record does not address certain features of claim 127

Although claim 127 recites elements that are different from those of claim 52, similar arguments still apply. In addition, claim 127 recites, in part, "***selecting between [a] processed version of the image***

and [an] unprocessed version of the image, wherein said selecting is based at least in part upon at least one characteristic associated with the client." The Examiner does not address this element, and therefore a *prima facie* case has not been made as to claim 127. Moreover, Appellant respectfully asserts that the proposed combination of references does not teach or suggest such element. For example, while *Pulier* discloses a server transmitting "streaming media," there does not appear to be anything in *Pulier* to indicate that its server "select[s] between [a] processed version of the image and [an] unprocessed version of the image," as recited in claim 127. *See, e.g., Pulier*, ¶ [0008]. At least for these additional reasons, Appellant respectfully requests that the 35 U.S.C. § 103(a) rejection of claim 127 and its respective dependent claims be withdrawn.

The rejection of record does not address certain features of claims 134 and 137

Although claims 134 and 137 recite elements that are different from those of claim 52, similar arguments still apply. In addition, claims 134 and 137 recite, in part, "***receiving from [a] server an image element processed to an extent determined at least in part by [] at least one characteristic associated with [a] client device.***" The Examiner does not address this element, and therefore a *prima facie* case has not been made as to claims 134 or 137. Moreover, Appellant respectfully asserts that the proposed combination of references does not teach or suggest such element. For example, while *Pulier* discloses a client receiving "streaming media," there does not appear to be anything in *Pulier* to indicate that such "streaming media" includes "an image element processed to an extent determined at least in part by [] at least one characteristic associated with [a] client device," as recited in claims 134 and 137. *See, e.g., Pulier*, ¶ [0008]. At least for these additional reasons, Appellant respectfully requests that the 35 U.S.C. § 103(a) rejection of claims 134 and 137 and their respective dependent claims be withdrawn.

The proposed combination of *Pavlidis* with *Pulier* is improper

Contrary to the Examiner's assertion, *Pavlidis* and *Pulier* are not "[i]n the same field of endeavor." *See* Final Office Action, p. 4. While *Pavlidis* is concerned with "measurements of dimensions of solid objects from two dimensional image(s)," *Pulier* discloses the "optimiz[ation of] a streaming media download from a plurality of host media sources." *Compare Pavlidis*, 1:16-20 (Technical Field) *with Pulier*, ¶ [0003] (Technical Field). To justify the combination, the Examiner states that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated … Pulier in the method and system of Pavlidis to reduce latency and optimizing communication between the client and the server." Final Office Action, pp. 4 and 5. However, there does not appear to be a "server" and a "client" in *Pavlidis*. Also, *Pavlidis* does not deal with "streaming media" or a "provider selection process," as *Pulier* does. Further, it is not at all clear why and/or how a person of ordinary skill in the art would be motivated to "reduce latency and optimiz[e]

communications" in *Pavlidis*. Therefore, Appeallant respecfully submits that the proposed combination of *Pavlidis* with *Pulier* is improper. At least for these additional reasons, Appellant respectfully requests that the 35 U.S.C. § 103(a) rejections of all pending claims be withdrawn.

Claims 118-126 and 137 recite patentable subject matter under 35 U.S.C § 101

The Examiner states that claims 118-126 and 137 are "drawn to a computer readable medium," and that their "broadest reasonable interpretation" covers a "signal per se." Final Office Action, pp. 2 and 3. However, these claims clearly recite "***[a]n article of manufacture*** including a computer readable medium…," and therefore fall squarely within one or more of the statutory categories of patentable subject matter. 35 U.S.C. § 101 ("Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title."). At least for these reasons, Appellant respectfully requests that the 35 U.S.C. § 101 rejections of claims 118-126 and 137 be withdrawn.

Conclusion

Appellant respectfully requests removal of the pending §§ 101 and 103 rejections, and either re-opening of prosecution or an allowance. Appellant has petitioned herewith for what is believed to be the appropriate extension of time. If any additional fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/6257-31902/LVP.

Also filed herewith is the following item:

☒ Notice of Appeal

☒ Petition Under 37 C.F.R. §1.136 For Extension of Time

Respectfully submitted,

Date: February 16, 2011

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